

Welcome to the latest edition of TT Talk, No. 69 in the series.

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1. 7/7 remembered

We would like to thank the many people who sent messages of concern and support following the bomb outrages in London on Thursday 7 July.

The Club's London office is very close to Aldgate station, the scene of the first explosion but fortunately none of our staff was affected. The office was within the security cordon established by the police and therefore had to be evacuated on the morning of 7 July. We could not regain access until just before lunchtime on Friday 8, and because of travel difficulties many staff were unable to get to work at all, although many did what they could by working from home.

Everything was back to normal on Monday 11 July, although further disruption was caused by the attempted explosions on 21 July, and by occasional local alerts caused by suspect packages (and even, on one occasion, a 'suspect bus').

The Club sends its sympathy and condolences to all those who were injured or who have lost friends or relatives in the attacks.

2. Security of hazardous materials in transit

Given recent events in London, we make no apology for returning to the warning reported in TT Talk No. 67. about the need to keep stocks of hazardous chemicals in transit under close control. According to a number of reports, the explosive used to such devastating effect on 7 July (and that which mercifully failed to detonate two weeks later) was a substance that can be made 'at home' with everyday chemicals such as sulphuric acid, hydrogen peroxide and acetone.

All of these substances are moved in significant quantities each day for perfectly legitimate commercial reasons. The concerns of most shippers and transporters are to ensure that the various regulations concerning safe transport, environmental protection and so on are complied with. That is right and proper: no responsible company wants to become involved in a hazmat incident because cargoes have been inadequately placarded, packed or stowed. But how often are drums and other packages of such chemicals left in open storage areas with little or no physical security? In your editor's experience, quite frequently, often because by their nature such products pose a risk to buildings and other commodities stored in them, so it is generally considered preferable to store them in the open yard. Yet a drum stolen here and a package stolen there can easily be used by terrorists for their own deadly purposes.

In this era of increased awareness of the terrorist threat, and in the knowledge that terrorists can misuse innocent and commercially-traded goods to create bombs, it is up to everyone in the supply chain to ensure that such consignments are handled, stored and moved with as much security as those containing valuable cargo.

3. TT Club's Hazmat seminars

While we are on the subject of dangerous goods transport, we remind you that the Club's series of seminars on this subject continues. The next three dates are:

6 September at the Merseyside Maritime Museum in Liverpool, UK
8 September at the London Museum in London's Docklands
5 October at the First Grand Hotel in Odense, Denmark

There is no charge for attending, but you must register beforehand by email to Helena Workneh: riskmanagement@ttclub.com

4. Warning on Morris cranes

ICHCA International reports that there has been a failure of a boom hoist gearbox on a Morris container crane and that this may be due to a design fault for all cranes from that company built after 1986. Fortunately the defect was discovered in time and there was no injury or damage.

Normally, the manufacturers of cranes would alert their clients to such defects and suggest what could be done to remedy them. However Morris Cranes has ceased trading and therefore no manufacturer's alert will be issued. ICHCA International and the Club are therefore joining forces to warn all users of Morris cranes to the possibility that a defect exists.

Any reader owning or operating a Morris crane is urged to contact the office of ICHCA International, who will supply a contact name and telephone number where technical engineering information relative to the failure, NDT testing and preventative measures can be obtained.

You may contact ICHCA International by telephone on +44 (0) 1708 735295, by fax: +44 (0) 1708 735225 or by email at info@ichcainternational.co.uk

5. Datec v UPS: a follow-up

Andrew Preston of London lawyers Clyde & Co, who acted for the claimants, writes to inform us that the case of Datec v UPS, reported in TT Talk No.67, is going to appeal. The hearing will take place in London in the week commencing 17 October 2005. We hope to report soon afterwards on the outcome.

In the meantime, David Martin-Clark has posted a report of the first instance judgment on his DMC's CaseNotes website http://www.onlinedmc.co.uk/datec_v__ups.htm

6. Young international freight forwarders head for Moscow finals

The Club congratulates the four finalists who will be travelling to the FIATA World Congress in Moscow in September. They are: Dalia Moussa (Egypt), representing the Africa and Middle East region; Alicia Chin from Canada, representing the Americas; Adiyanto Thaib (Indonesia) for Asia Pacific; and Anna Altshul from Russia for Europe.

Each will be hoping for selection as the overall Young International Freight Forwarder of the Year and a prize that includes hands-on training experience at one of the Club's regional centres in London, Hong Kong or New Jersey.

Now in its seventh year, the young international freight forwarder of the year award is recognition by FIATA, IATA and TT Club of the need to develop quality in the industry and to reward young talent with valuable training opportunities. The Club has been a sponsor of the award since its inception and firmly believes in its importance. In a statement, marketing director Ian Lush confirmed the Club's continuing commitment to the partnership with FIATA in sponsoring the award, adding 'obviously we hope that the international winners who come to us for training will return to their employers with a greater understanding of the nature of risk in the supply chain and the importance of managing it effectively.'

The competition is open to anybody under 30 in full-time employment with a freight forwarding company. Anybody interested in entering next year's competition should contact their national FIATA-accredited forwarding association. Full details and an entry form will be available later this year.

7. The perils of being a multinational

We are indebted to our good friend Peter Jones, editor of the Forwarderlaw website, for the following story from Spain, which highlights a danger for multinational transport companies. Often such companies promote themselves under a single logo or trademark, giving clients the impression that one company will be responsible for the safety of their cargo throughout its journey. In reality however, the facade conceals a complex corporate structure consisting of different national companies, working together but each guarding its own identity. Often central administrative functions, including insurance and claims handling, are handled by different companies within the group. As this Spanish decision shows, such companies should take care to identify clearly their role and their relationship when handling claims on behalf of other members of the group.

The case before the court of appeal in Barcelona concerned a claim brought by Cibertrans against DHL International Ltd. Cibertrans acted as a freight forwarder and had been held liable by its client for wet damage to a consignment while in transit from Dubai to Spain. The original contract of carriage had been made between the cargo owners and DHL International EC in Dubai, and had been concluded through the agency of Cibertrans' agents in the UAE. The consignees submitted a claim for damages to DHL Victoria (Spain), DHL Middle East and DHL Dubai. The claim was referred to and ultimately handled by DHL Aviation in Brussels.

DHL Aviation rejected liability as it concluded that the damage could not have arisen while the goods were in transit. Eventually Cibertrans settled the claim from its client and then brought an action in the Spanish courts for recovery of the payment. It did not sue any of the DHL companies who had notice of the claim, but instead the writ names DHL International Limited, a Bermuda corporation. As this DHL company had no prior information concerning the claim, it did not enter an appearance and the court declared it to be in default. At a subsequent hearing, DHL International argued on the basis of long-established privity of contract rules, that as an independent corporate entity it had no responsibility for the liabilities of any other DHL company, and no relation whatsoever with the contract concluded in Dubai. The lower court rejected these submissions and held DHL International liable. On appeal the earlier decision was confirmed, the court ruling that

- a. The document that incorporated the contract of carriage contained the trademark 'DHL Worldwide Express'. The description of this trademark in the DHL website explained that it referred to a group of companies operating under the same overall management and providing services worldwide.
- b. DHL had dealt with the claim as a group at the out of court stage, and had never objected at any point that the claim would only be considered by a specific part of the DHL organisation, for example the Dubai company.
- c. The burden of proof as to the independence of the different corporations of DHL group lay with DHL International Limited, but it had not produced any evidence to rebut the plaintiff's arguments.

Commenting on the case, Mr Felipe Arazon from AACNI Barcelona says that one conclusion from this decision is that the courts are ready to modify the privity of contract rules and to look at websites and trademarks as well as the conduct of the parties before the lawsuit is brought to ascertain whether a company within a given corporate group can be made responsible for the damages or losses attributed to another company within the group.

More on: <http://www.forwarderlaw.com/>

8. Conclusion

We hope that you will have found the above items interesting. If you would like to have further information about any of them, or have any comments you would like to make, please email the editor at tt.talk@ttclub.com. We look forward to hearing from you.

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